

MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE
November 5, 2004

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the Marriott Hotel (Los Angeles Airport) on November 5, 2004. Attendance was as follows:

MEMBERS PRESENT:

Curt C. Barwick
Christopher A. Delfino
Bruce R. Deming*
James F. Fotenos
Matthew R. Gemello
Steven K. Hazen
Mark T. Hiraide
Nina L. Hong
Victor Hsu
Brian A. Lebrecht
Brian D. McAllister
Deborah J. Ruosch
David Serepca
Lemoine Skinner III
Jennifer Lynn Sostrin
Steven B. Stokdyk
Suzanne L. Weakley*
Bertha Cortes Willner
Brian M. Wong
Russell J. Wood

MEMBERS ABSENT:

Stewart Laughlin McDowell
Teri Shugart
Lee Kolodny
William R. Sawyers

LIAISONS AND GUESTS PRESENT:

Betsy Bogart, Secretary of State
John Webber, NASD*
Timothy L. Le Bas, Department of Corporations
Rosalind Tyson, Securities & Exchange Commission*
Larry Doyle, State Bar of California
*Via Telephone

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda that are not described in these minutes.

I. ADMINISTRATIVE MATTERS

1. Opening Remarks and Announcements: The meeting was called to order by Co-Chairs Fotenos and McAllister at 9:30 a.m. Mr. Fotenos thanked the members of the Committee in attendance and informed them that a quorum was present.
2. Introduction of New Members: Mr. Fotenos welcomed each of the new and returning members of the Committee to the first meeting of the 2004 – 2005 year. Following Mr. Fotenos' welcome, each of the members and liaisons then briefly introduced themselves.
3. Schedule of 2004 – 2005 Meetings; San Francisco Location: The Schedule of Meetings for the 2004 – 2005 year was reviewed. Mr. Fotenos emphasized the importance and value placed upon in-person attendance. The members also discussed the possibility of changing the location for Northern California meetings to downtown San Francisco.
4. Approval of Minutes of April Meeting: The minutes for the meeting on October 8, 2004 were approved in the form circulated (with minor corrections).

II. AGENCY AND LIAISONS' REPORTS

1. Securities & Exchange Commission: Rosalind Tyson reviewed the newly approved hedge fund regulations requiring managers of funds with \$25 Million or more under management to register as investment advisors. Ms. Tyson also reviewed and discussed the November 3, 2004 release entitled "Securities Offering Reform" fundamentally modifying the registration, communications and offering processes under the Securities Act of 1933. Ms. Tyson also reported that the effective date of certain regulations requiring hedge fund managers to register as investment advisers had been deferred until 2006. Ms. Tyson also reported that the SEC had not yet reached a consensus on the final reporting-out feature of the Part 205 Attorney Conduct Rules and that there was no set timetable for their release.
2. NASD: John Webber gave an overview of the NASD's Los Angeles office, as well as other offices in the Western Region (San Francisco, Seattle and Denver). Mr. Webber reviewed recent rulemaking activities including changes to Rule 3013 requiring member firms to designate a Chief Compliance Officer on Schedule A to Form BD by December 1, 2004 and Rule 1120 removing exemptions from annual continuing education requirements (effectively eliminating "grandfathering" provisions for certain brokers).
3. Department of Corporations: Tim Le Bas announce that the Department had received the Good Government Award from the International Franchise Association on October 20, 2004 as a result of the Department's successful implementation of a "risk-based" review process with respect to Franchise Applications. Mr. Le Bas also indicated that the Department had formed a

committee of six individuals to study the Uniform Securities Act of 2002 in order to determine whether it should be adopted in California in its entirety, partially or at all. The Department hopes to release a “report” after January 2005 containing an analysis of the Uniform Securities Act in comparison with the Corporate Securities Law of 1968, making recommendations and possibly attaching draft amendments. The Department will solicit input from all interested parties (including the Corporations Committee). Mr. Le Bas next reviewed recent legislation and rulemaking activity of interest to California corporate practitioners. In particular, Mr. Le Bas reported that (i) AB3070 will take effect on January 1, 2005 requiring California-registered investment advisers and their representatives to file with the NASD’s Investment Adviser Registration Depository (“IARD”), (ii) proposed changes to Section 25102(f) requiring electronic filing of Form 25102(f) with certain hardship exemptions, (iii) the California Deferred Deposit Transaction Law which will be operative December 31, 2004 transferring regulation of this business activity from the Department of Justice to the Department of Corporations and (iv) Governor Schwarzenegger has asked the Department to review and analyze the recently-enacted AB1000 (cleanup bill to AB55) to determine if duplicative filing requirements still remain under federal and state law and, if so, to whether action should be taken to align federal and state filing requirements.

4. Secretary of State: Betsy Bogart announced that she had been promoted to Acting Division Chief – Corporations (in charge of business entity filings, UCC, notary, trademark etc.), following the promotion of Cathy Mitchell to Under Secretary of State. Ms. Bogart also announced that Pam Giarrizzo had been named Chief Counsel. Ms. Bogart briefly explained the Secretary of State’s UCC-Connect program (electronic filing of UCC filings now required, with confirmation of acceptance typically available within two days). Ms. Bogart also indicated that the Secretary of State had no current legislative projects at this time.
5. State Bar – Office of Governmental Affairs: Larry Doyle, Chief Legislative Counsel, introduced himself to the new members of the Committee and explained that his office operates on behalf of the State Bar and that as Chief Legislative Counsel, his role is to monitor legislation of interest or concern to the State Bar itself and the legal profession in general. Mr. Doyle also explained that as a subset of the above, he represents the Sections of the Bar including the Business Law Section and the Corporations Committee and, specifically that he assists our Committee identify legislation of interest and then works with us to get such legislation passed, modified or vetoed. Mr. Doyle then described in general terms the legislative process and reviewed last year’s legislative activities and accomplishments.
6. BLS Committee Liaison Reports; Appointment of Liaisons: Mr. Fotenos and Mr. McAllister reviewed the function and role of the liaisons to various other committees within the Business Law Section and asked for volunteers. After discussion, the following appointments were made:
 - Corporate Law Departments – William Sawyers

- Non-Profit Corporations – Chris Delfino
- Partnerships and LLCs – Bruce Deming
- Cyberspace Law – David Serepca

The Committee determined that additional appointments may be made at a later date depending upon interest

III. COMMITTEE’S MISSION STATEMENT; AGENDA FOR 2004 – 2005

1. Review of Committee’s Mission Statement: Mr. Fotenos led a discussion of the Committee’s Mission Statement.
2. Committee’s Agenda for 2004 – 2005: Mr. McAllister led a discussion of the Committee’s Agenda for the upcoming year. In particular, Mr. McAllister noted that interfacing with the Department of Corporations regarding its AB1000 and Uniform Securities Act projects should be a major goal for the Committee. Bertha Willner, David Serepca, Mark Hiraide and Bruce Deming indicated an interest in working on these projects. Mr. Fotenos also suggested that the Committee may wish to consider working to modernize the close corporation rules to incorporate the Model Act. David Serepca and Suzanne Weakley indicated an interest in working on this project and Mr. Hazen indicated that he would be available to review any work product. Mr. McAllister suggested that it might be helpful to have specific subcommittees appointed with primary responsibility over these and other projects. After discussion, the following subcommittees were established:
 - Legislative Tracking & Lobbying – Steve Stokdyk, Chris Delfino and Deborah Ruosch
 - Education – Teri Shugart and Suzanne Weakley
 - Communications – Victor Hsu, Mark Hiraide, David Serepca and Suzanne Weakley
 - Uniform Securities Act Project – Bertha Willner, Mark Hiraide, David Serepca, Bruce Deming and Lemoine Skinner
 - DOC Task Force – Curt Barwick and Brian Lebrecht
 - Opinion Report – Steve Hazen, Matt Gemello and Jim Fotenos
 - Guide to Organizing California Corporation – Teri Shugart, Suzanne Weakley, Brian McAllister, Jennifer Sostrin and Lee Kolodny
3. Legislative Agenda: Mr. Stokdyk led a discussion of the legislative goals for the 2004 – 2005 year and reviewed a summary of the proposed procedures for tracking and addressing legislation.
4. Communication and Website Development: Mr. Hsu described plans to have a Corporations Committee extranet site operative in the near future whereby Committee materials could be archived and downloaded. Mr. Hsu also indicated that updating the Committee’s website will be a major goal for the upcoming

year. In particular, Mr. Hsu indicated that he would like to see the website have an index page and links, as well as practice notes, comments and practice tips.

5. Educational Activities: The Committee briefly discussed upcoming programs and projects including Ms. Shugart's efforts on an upcoming gender bias seminar and various Business Law News articles being worked on by Ms. Weakley and/or others.

IV. OPINIONS REPORT

1. Mr. Fotenos reported that comments to version 9 of the Opinions Report had been received and that several members of the Committee were meeting that afternoon with representatives of the Executive Committee and the Opinions Committee to review comments and resolve differences. Mr. Fotenos indicated that a revised draft would be circulated prior to the December meeting and that the Opinions Report would be combined with the Remedies Opinion Report prepared by the Section.

V. OTHER PROJECTS

1. Guide to Organizing a California Corporation. Another draft is expected prior to December meeting.
2. Attorney Conduct Rules/Law Review Article. Mr. Hazen noted that the Committee's law review article regarding the status of the SEC's attorney conduct rules was being published in December by the Pepperdine Law Review.

VI. OTHER BUSINESS

1. Recent Cases. The Committee discussed two cases of interest, Jasmine Networks, Inc. v. Marvell Semiconductor, Inc. and Gilliland v. Motorola.
2. Section 710 Amendment. Mr. Fotenos discussed Section 710 of the Corporations Code (supermajority vote requirements), the legislative history of Section 710, as well as possible modifications thereof. A proposed revision of Section 710 was reviewed and after discussion was unanimously approved. Mr. Fotenos was asked to prepare an affirmative legislative proposal to accompany the proposal to be sent to the Executive Committee for its review and approval.

The meeting was adjourned at approximately 12:30 p.m.

/s/ Curt C. Barwick
Curt C. Barwick, Co-Secretary